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HOUSE BILL 1090

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Dona G. Irwin

AN ACT

RELATING TO PROPERTY; ENACTING THE PRIVATE PROPERTY PROTECTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Private Property Protection Act".

Section 2. DEFINITIONS.--As used in the Private Property Protection Act:

A. "government unit" means a political subdivision of the state, including a board, commission, council or combination thereof, or department or agency in the executive branch of government;

B. "market value" means the price a buyer would pay a seller after considering all factors in the marketplace that influence the price of private property;

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1 C. "nonregulatory act" includes closure of a
2 military base or government facility;

3 D. "owner" means a person or other legal entity
4 holding legal or equitable title to private property for all
5 its beneficial uses available at the time of acquisition and
6 for the value of its future dispositions;

7 E. "private property" means an interest in real
8 property as recognized by common law, including land, ground
9 water or surface water rights of any kind that are not owned by
10 the federal government or a government unit; and

11 F. "regulatory program" means an action of a
12 government unit that affects an owner's private property in
13 whole or in part, temporarily or permanently, in a manner that
14 restricts or limits the owner's vested rights in property that
15 would otherwise exist in the absence of the government action.
16 A "regulatory program" includes a land-use planning or zoning
17 program.

18 Section 3. INVERSE CONDEMNATION.--

19 A. Whenever implementation of a regulatory program
20 by a government unit operates to reduce the market value of
21 private property for the uses permitted at the time the owner
22 acquired a title interest, or the date immediately preceding
23 the effective date of the regulatory program, whichever is
24 later, the property is deemed to have been taken for the use of
25 the public.

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1 B. The owner of private property described in
2 Subsection A of this section may either require condemnation by
3 and just compensation from the government unit that imposed the
4 regulatory program resulting in decreased value, or receive
5 compensation for the reduction in value caused by the
6 regulatory program.

7 C. The compensation for private property taken
8 shall be for the full value of the interest taken or for the
9 full amount of the decrease in market value, and compensation
10 shall not be limited to the amount by which the decrease in
11 market value exceeds twenty-five percent of value as calculated
12 pursuant to Subsection A of this section. The market value
13 shall be established by fully accredited commercial appraisers.

14 D. Government units subject to the provisions of
15 the Private Property Protection Act shall not make waiver of
16 the provisions of that act a condition for approval of the use
17 of private property or the issuance of a permit or other
18 entitlement. An owner of private property may accept an
19 approval of use, permit or other entitlement granted by a
20 government unit without compromising rights pursuant to the
21 Private Property Protection Act if:

22 (1) a written reservation of rights is made at
23 the time of acceptance of the authorization, permit or other
24 entitlement; or

25 (2) an oral statement reserving rights is made

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1 before the government unit granting the authorization, permit
2 or other entitlement at a public meeting at which the
3 government unit renders its decision.

4 E. A percent reduction in market value shall be
5 determined by comparing the market value of the private
6 property when the regulatory program is in effect to the market
7 value when the program is not in effect.

8 Section 4. EXCEPTIONS.--No compensation is required
9 pursuant to the Private Property Protection Act if the
10 regulatory program:

11 A. is a nonregulatory act that results in a
12 diminution of the value of the private property but does not
13 otherwise destroy, damage, trespass upon or take the property
14 or prohibit any rightful use of the property;

15 B. prohibits a use of the private property that is
16 injurious or potentially injurious to the public health and
17 safety or is a public nuisance, as defined by common law,
18 statute or rule unless the use is an unproven potentially
19 injurious use; or

20 C. produces benefits to the owner equivalent to or
21 greater than any loss to the owner as determined by the market
22 value of the property before and after the action.

23 Section 5. STATUTE OF LIMITATIONS.--

24 A. The statute of limitations for actions brought
25 pursuant to the Private Property Protection Act is the statute

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1 of limitations for ordinary actions brought for injuries to
2 real property, except that the time begins to run upon the
3 final administrative decision implementing the regulatory
4 program affecting the owner's private property.

5 B. A regulatory program is implemented with respect
6 to an owner's private property when actually applied to that
7 property unless the enactment of the program by itself operates
8 to reduce the market value of the property, or any legally
9 recognized interest therein, to less than its market value for
10 the uses permitted at the time the owner acquired a title
11 interest, in which case the date of enactment is the date of
12 implementation.

13 Section 6. ENFORCEMENT--BINDING ARBITRATION.--

14 A. An owner may enforce the provisions of the
15 Private Property Protection Act by filing a complaint and a
16 written demand for binding arbitration with the government unit
17 that implemented or mandated the regulatory program. Within
18 thirty days after the filing of the complaint, the owner and
19 the government unit shall each designate an arbitrator and the
20 two arbitrators shall select a third arbitrator. The
21 arbitrators shall be independent individuals with no vested
22 interest in the result of the arbitration and shall be versed
23 in property law or property values and preferably have
24 experience in the practice of law. The arbitration panel shall
25 conduct a hearing within sixty days of the filing of the

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1 complaint. Unless otherwise provided in this section, the
2 procedures for the arbitration shall be governed by the Uniform
3 Arbitration Act. The award of the arbitration panel shall be
4 final and binding. No arbitrator shall be subject to liability
5 for actions taken pursuant to this section.

6 B. The owner and the government unit shall share
7 the cost of the arbitration panel and each party shall
8 otherwise bear its own costs.

9 C. If the government unit is a political
10 subdivision of the state and if the arbitration panel finds
11 that the government unit implemented the regulatory program
12 because of a mandate imposed by a federal or state agency or a
13 federal or state law, then the owner's complaint shall be
14 dismissed; provided that nothing in the Private Property
15 Protection Act prohibits such an owner from filing another
16 complaint with the appropriate state agency.

17 D. A government unit subject to an award of
18 compensation under the Private Property Protection Act shall,
19 within thirty days after the award, pay to the owner the
20 awarded compensation.

21 E. Alternatively, the government unit against which
22 inverse condemnation is successfully required under the Private
23 Property Protection Act may, within thirty days of the decision
24 rescind the land use planning, zoning or other regulatory
25 program as it affects the owner's private property and all

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1 similarly situated land in the jurisdiction in which the
2 regulatory program is in effect, without further public
3 hearings, proceedings or environmental review. If the
4 government unit elects to rescind the affected regulatory
5 program, the program that was in effect previously shall
6 automatically be in effect. In that event, the government unit
7 shall be liable to the owner for the reasonable and necessary
8 costs of the inverse condemnation action, plus any actual and
9 demonstrable economic losses caused the owner by the regulatory
10 program during the period in which that program was in effect.

11 F. This section does not affect any remedy that is
12 constitutionally required.

13 G. Any permit, authorization or other entitlement
14 granted under a regulatory program rolled back pursuant to this
15 section shall, at the owner's discretion, continue to be valid,
16 notwithstanding any provision of law in the program reinstated
17 by the rollback.

18 Section 7. LEGAL CHALLENGES.--Nothing in the Private
19 Property Protection Act precludes an owner from bringing legal
20 challenges to a regulatory program affected by that act in
21 instances where the regulatory-program-caused diminution in
22 value of the private property or its use does not exceed the
23 market value for the uses permitted at the time the owner
24 acquired title interest, and nothing in the Private Property
25 Protection Act precludes an owner from bringing a legal

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1 challenge to a regulatory program affected by that act based on
2 other provisions of law.

3 Section 8. PROPERTY TAX ADJUSTMENT.--If the arbitration
4 panel finds that the regulatory program has reduced the market
5 value of a taxpayer's private property, the county assessor
6 shall adjust the value of the property for taxation purposes to
7 reflect that decrease.

8 Section 9. APPLICABILITY.--No complaint shall be brought
9 pursuant to the Private Property Protection Act for damages
10 caused by a regulatory program in effect or proposed and
11 pending prior to the effective date of that act.